

**SUMMARY REPORT OF INVESTIGATION<sup>1</sup>****I. EXECUTIVE SUMMARY**

Date of Incident:	March 10, 2016
Time of Incident:	5:55 a.m.
Location of Incident:	[REDACTED]
Date of IPRA Notification:	March 10, 2016
Time of IPRA Notification:	6:14 a.m.

On March 10, 2016, at approximately 5:55 a.m., Officer [REDACTED], was off-duty when he exited his residence and observed a black male subject, Subject #1, standing by the rear of the officer's vehicle, a [REDACTED], and in front of a [REDACTED] [REDACTED]. A silver [REDACTED] was parked, on the street, directly next to the [REDACTED]. Officer [REDACTED] was aware of reported catalytic converter thefts in the area in which the subjects were driving a [REDACTED]. Based on this information, Officer [REDACTED] announced his office and another black male subject, Subject #2, stood up between the [REDACTED] and [REDACTED]. Subject #2 then entered the front passenger seat of the [REDACTED]. Subject #1 ran to the driver side of the [REDACTED]. Officer [REDACTED] followed – on foot - and attempted to grab Subject #1, but Subject #1 entered the driver's seat of the [REDACTED] and placed the vehicle into drive.

Subject #1 drove forward and struck Officer [REDACTED], who was standing in front of the [REDACTED] with his firearm displayed. The vehicle struck Officer [REDACTED] on the leg and knocked him onto the hood of the [REDACTED] causing him to inadvertently discharge his firearm once. Officer [REDACTED] rolled off the hood of the [REDACTED] and landed on the pavement. Officer [REDACTED] then discharged his firearm three times at the [REDACTED], occupied by both subjects, as the vehicle drove away. Officer [REDACTED] attempted to follow the [REDACTED] by getting into his personal vehicle and trying to catch up with the fleeing [REDACTED] but was unsuccessful. The subjects fled and made good their escape. Officer [REDACTED] returned to his residence and called 911 to report that he discharged his firearm.<sup>2</sup>

<sup>1</sup> On September 15, 2017, the Civilian Office of Police Accountability (COPA) replaced the Independent Police Review Authority (IPRA) as the civilian oversight agency of the Chicago Police Department. Therefore, this investigation, which began under IPRA, was transferred to COPA on September 15, 2017, and the recommendation(s) set forth herein are the recommendation(s) of COPA.

<sup>2</sup> Subject #1 and Subject #2 have not been identified.

**II. INVOLVED PARTIES**

Accused Officer #1:	[REDACTED], Star # [REDACTED], Employee ID# [REDACTED], Date of Appointment: [REDACTED], 1995, Chicago Police Officer, Unit of Assignment: [REDACTED], DOB: [REDACTED], 1970, White Male.
Subject #1:	Unidentified
Subject #2:	Unidentified

**III. ALLEGATIONS**

Officer	Allegation	Finding
Officer [REDACTED] [REDACTED], # [REDACTED]	1. Accidentally discharged his firearm, in violation of Rule 10. 2. Fired his firearm at and into a moving vehicle, in violation of Rule 6.	Sustained
		Sustained

**IV. APPLICABLE RULES AND LAWS**

## Rules

1. **Rule 6** – Disobedience of an order/directive, whether written or oral.
2. **Rule 10** – Inattention to duty.

## General Orders

1. Deadly Force, **G03-02-03**

## Federal Laws

1. Fourth Amendment

## State Laws

1. Use of Force by Police Officer statute

## V. INVESTIGATION<sup>3</sup>

### a. Interviews

In an **interview with COPA** on February 08, 2018, **Accused Officer [REDACTED]**, # [REDACTED]<sup>4</sup>, stated that on March 10, 2016, he exited his home to go to work. Officer [REDACTED] stated he was in “BDU<sup>5</sup>” which he described as a green uniform. Officer [REDACTED] name and star number was on his uniform, but his name and star number were covered by his jacket which did not have any police identifiers. As Officer [REDACTED] exited his house, he observed a silver [REDACTED], and an unidentified black male subject, (Subject #1). Subject #1 was standing in the street at the rear of Officer [REDACTED] vehicle,<sup>6</sup> a [REDACTED] [REDACTED] [REDACTED], and between the [REDACTED] and Officer [REDACTED] neighbor’s vehicle.<sup>7</sup> The [REDACTED] was double parked next to the [REDACTED]. Subject #1 looked at Officer [REDACTED] with a startled look. Officer [REDACTED] stated Subject #1 appeared to be a “lookout.”

Officer [REDACTED] had been receiving emails from the [REDACTED] District of the Chicago Police Department regarding recent catalytic converter thefts in which the subjects were driving a [REDACTED]. Accordingly, Officer [REDACTED] believed the individuals he observed were the “people committing the catalytic converter thefts”<sup>8</sup> and decided to take Subject #1 into custody.<sup>9</sup> Officer [REDACTED] began to close the gap between himself and Subject #1. Officer [REDACTED] had groceries, a box of Ramen soup and container of coffee, in his hands.

As Officer [REDACTED] walked toward Subject #1, Subject #1 walked to the front of the [REDACTED] towards the driver's side. A second unidentified black male subject (Subject #2) popped up from between the [REDACTED] and the [REDACTED] holding a Sawzall.<sup>10</sup> Subject #2 rushed to the passenger side of the [REDACTED] and hopped in the passenger side. Officer [REDACTED] stated he was closer to the [REDACTED] passenger side door. Officer [REDACTED] dropped his groceries, pulled out his firearm, and yelled, "Stop, police. Stop, police."

Officer [REDACTED] attempted to grab Subject #1 as Subject #1 ran around to the driver's side of the [REDACTED]. Subject #1 entered the [REDACTED] and placed the vehicle into drive. Subject #1

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<sup>3</sup> This case was initiated under IPRA and COPA acknowledges that this investigation may have endured periods of delayed and/or no investigative activity prior to COPA. While there may be legitimate cause for the delay, no justification was noted in the file. Since launch, COPA has undertaken a concerted effort to facilitate the expeditious review of all cases initiated under IPRA while ensuring that each complaint has been subject to a full and thorough investigation prior to its closure.

<sup>4</sup> Attachment 69

<sup>5</sup> Battle Dress Uniform

<sup>6</sup> Officer [REDACTED] vehicle was parked on the street.

<sup>7</sup> Officer [REDACTED] could not recall the make or model of his neighbor's vehicle, but remembered it was red.

Evidence Technician Photographs (Attachment 15) documented that the neighbor's vehicle was a [REDACTED] [REDACTED].

<sup>8</sup> Page 8, Lines 11-12

<sup>9</sup> Prior to the incident, Officer [REDACTED] received e-mails from the [REDACTED] District about catalytic converter thefts in the area and that a [REDACTED] was involved in the catalytic converter thefts. Officer [REDACTED] home is located within the [REDACTED] district.

<sup>10</sup> A cordless reciprocating saw.

drove forward striking Officer [REDACTED], as he stood, in front of the [REDACTED]. Officer [REDACTED] believed there was not enough time to move. The vehicle driven by Subject #1 hit Officer [REDACTED] left knee, moving him forward onto the hood of the vehicle. Officer [REDACTED] then slid up the hood and flipped over the car. Officer [REDACTED] stated when he was on the hood of the vehicle his firearm accidentally discharged. Officer [REDACTED] stated his firearm was in his right hand and the left side of his body struck the hood of the [REDACTED]. According to Officer [REDACTED], he believed when he struck the hood of the vehicle he grabbed "at the hood of the vehicle, somehow...involuntarily flexed and made a muscle contraction and hit the trigger,"<sup>11</sup> with his finger. Officer [REDACTED] stated he tried to grab the hood of the [REDACTED] or something to keep from falling down. Officer [REDACTED] fell onto the pavement and landed on his left side.

Officer [REDACTED] went to one knee and discharged three quick shots in succession. Officer [REDACTED] stated he discharged his firearm, at the [REDACTED], because the subject driving the vehicle attempted to kill him, and he felt the subject would try to kill or harm citizens or police officers, in the area. Officer [REDACTED] stated he does not know if he struck the [REDACTED]. After he discharged his firearm, Officer [REDACTED] went to his own vehicle and drove to catch the [REDACTED] to get its license plate number. However, Officer [REDACTED] was unable to get the license plate number. When Officer [REDACTED] lost sight of the [REDACTED], he returned to the scene, and called 911 to report the incident.

Officer [REDACTED] stated that a [REDACTED] was recovered after the incident, but he does not know whether it was the same vehicle involved in this incident. Officer [REDACTED] stated the only weapon he observed was a Sawzall in Subject #2's hand. Officer [REDACTED] stated he sustained injuries to his knee and abrasions to his face and elbow. Officer [REDACTED] went to [REDACTED] in [REDACTED] for medical treatment via ambulance.

Officer [REDACTED] admitted he accidentally discharged his firearm and fired his weapon at and into a moving vehicle. Officer [REDACTED] stated he was "trying to fire at the offender, who had just caused great bodily harm to me, and I figured would also cause great bodily harm and hurt others in the area."<sup>12</sup> Officer [REDACTED] stated he was not in harm's way when he discharged his firearm at the [REDACTED].

#### **b. Digital Evidence**

**Office of Emergency Management & Communications (OEMC)**<sup>13</sup> records document that on March 10, 2016, at approximately 5:53 a.m., Officer [REDACTED] called and reported that he is an off-duty Chicago Police Officer, on his way to work, involved in a shooting at [REDACTED] [REDACTED] Street. Officer [REDACTED] reported that he discharged his firearm and was struck by a vehicle involved in a catalytic converter theft.

**Evidence Technician Photographs<sup>14</sup> and Video<sup>15</sup>** depict the scene, Officer [REDACTED], a [REDACTED], license plate number [REDACTED],<sup>16</sup> and recovered evidence.

<sup>11</sup> Attachment 69, p. 23, Lines 6-8

<sup>12</sup> Attachment 69, p. 43, Lines 18-21

<sup>13</sup> Attachment 42

<sup>14</sup> Attachment 15 and 16

### c. Physical Evidence

A **Chicago Fire Department Ambulance Report**<sup>17</sup> documents that Ambulance 39 arrived at the scene on March 10, 2016 at approximately 6:07 a.m. Officer [REDACTED] complained of left knee pain. Officer [REDACTED] told paramedics that as unidentified subjects drove away, they struck him on his left side causing him to roll onto the vehicle. Officer [REDACTED] then fell on the ground. Officer [REDACTED] did not initially want to go to the hospital. In the ambulance, paramedics noted some swelling to Officer [REDACTED] knee and he agreed to go to the hospital. On the way to the hospital, Officer [REDACTED] stated his left side was sore. Officer [REDACTED] was transported to [REDACTED] and arrived there at approximately 6:23 a.m.

**Medical Records from [REDACTED]**<sup>18</sup> document that on March 10, 2016, Officer [REDACTED] was treated for a left knee strain sustained from being struck by a moving vehicle.

**CPD Crime Scene Processing Report**<sup>19</sup> No. [REDACTED] documents evidence identified, collected, and inventoried in connection with this incident. A summary of that information is as follows:

- Inventory # [REDACTED]: Four (4) R & P .45 caliber fired cartridge cases.<sup>20</sup>
- Inventory # [REDACTED]: Officer [REDACTED] firearm, a Smith & Wesson model [REDACTED], .45 caliber semi-automatic pistol. The gun magazine in the firearm had an eight (8) shot capacity<sup>21</sup> and there were five (5) R & P .45 caliber unfired cartridge cases recovered from the firearm.

Additionally, **Crime Scene Processing Report**<sup>22</sup> No. [REDACTED] documents that on March 12, 2016, a silver [REDACTED], license plate number [REDACTED], was recovered at [REDACTED]. The vehicle was photographed, examined, and processed for evidence. There were two bullet holes observed on the vehicle: one on the back portion of the trunk lid of the vehicle and one on the rear passenger side of the vehicle. There were no projectiles or bullet fragments recovered from the vehicle. Biological material was recovered from the gear shift

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<sup>15</sup> Attachment 40

<sup>16</sup> Attachment 24. A [REDACTED] was recovered on March 12, 2016, at [REDACTED]. The [REDACTED] recovered at [REDACTED] closely matched the description of the vehicle observed by Officer [REDACTED]. [REDACTED] had been reported stolen prior to the incident on March 10, 2016, and was recovered two days after the incident with two bullet holes in locations consistent with Officer [REDACTED] discharging his firearm at it while it fled away from him.

<sup>17</sup> Attachment 60

<sup>18</sup> Attachment 59

<sup>19</sup> Attachment 13

<sup>20</sup> Three of the fired cartridge cases were recovered from the ground at [REDACTED] and one fired cartridge case was recovered from the engine hood at the windshield of a parked maroon [REDACTED], located at [REDACTED].

<sup>21</sup> The total capacity of Officer [REDACTED] firearm on the date of the incident was nine rounds (eight rounds in the magazine and one in the chamber).

<sup>22</sup> Attachment 23

lever, steering wheel, and interior driver's door handle of the vehicle. Latent fingerprints were also recovered from the vehicle's rear-view mirror.<sup>23</sup> The report documented that the [REDACTED] may be involved in an Aggravated Battery, Rd # [REDACTED].<sup>24</sup>

Illinois State Police (ISP) Forensic Science Laboratory Report<sup>25</sup> dated April 6, 2016, documents that Officer [REDACTED] firearm, a Smith & Wesson model [REDACTED], .45 caliber semi-automatic pistol, five (5) R & P .45 caliber unfired cartridge cases, and a gun magazine (Inventory # [REDACTED]) were examined and found to be operable. Four Remington .45 caliber auto fired cartridge cases (Inventory # [REDACTED]) were examined and determined to have been discharged from Officer [REDACTED] firearm.

#### d. Documentary Evidence

An **Original Case Incident Report**<sup>26</sup> dated March 10, 2016, for Battery- Aggravated: Other Dangerous Weapon, RD # [REDACTED], documented the incident. Additionally, an **Original Case Incident Report**,<sup>27</sup> dated March 07, 2016, for Motor Vehicle Theft – Automobile documented that a [REDACTED] [REDACTED], license plate number [REDACTED], was stolen.

**The Case Supplementary Report**<sup>28</sup> contains essentially the same information as Officer [REDACTED] provided in his interview with COPA.

**A Tactical Response Report (TRR)**<sup>29</sup> documented that unidentified subjects did not follow verbal direction, fled, attacked with a weapon, and used force likely to cause death or great bodily harm. The TRR also documented that the subjects used a motor vehicle, [REDACTED], to strike Officer [REDACTED]. Officer [REDACTED] was struck by the motor vehicle, [REDACTED], causing injury to Officer [REDACTED]. Officer [REDACTED] responded with verbal commands and the discharge of his firearm. Officer [REDACTED] discharged his firearm four times.

**The Officer's Battery Report (OBR)**<sup>30</sup> documented that Officer [REDACTED] was investigating a suspicious person while off-duty, but in uniform,<sup>31</sup> on March 10, 2016, at 5:45 a.m., at [REDACTED]. The two unidentified subjects attacked Officer [REDACTED] by striking/using blunt force (including actual attempt). Officer [REDACTED] sustained minor injury.

CPD's Bureau of Internal Affairs conducted an **alcohol and drug test**<sup>32</sup> on Officer [REDACTED] on March 10, 2016, beginning at 10:45 a.m., and the tests revealed no drugs or alcohol in his system.

<sup>23</sup> There is no information available at this time to identify subjects.

<sup>24</sup> This is the incident involving Officer [REDACTED].

<sup>25</sup> Attachment 39

<sup>26</sup> Attachment 7

<sup>27</sup> Attachment 25

<sup>28</sup> Attachment 11

<sup>29</sup> Attachment 8

<sup>30</sup> Attachment 30

<sup>31</sup> In Officer [REDACTED] statement (Attachment 69), he stated he was in "BDU," Battle Dress Uniform, which he stated was a green uniform.

<sup>32</sup> Attachment 12

## VI. LEGAL STANDARD

For each Allegation COPA must make one of the following findings:

1. Sustained - where it is determined the allegation is supported by a preponderance of the evidence;
2. Not Sustained - where it is determined there is insufficient evidence to prove the allegations by a preponderance of the evidence;
3. Unfounded - where it is determined by clear and convincing evidence that an allegation is false or not factual; or
4. Exonerated - where it is determined by clear and convincing evidence that the conduct described in the allegation occurred, but it is lawful and proper.

**A preponderance of evidence** can be described as evidence indicating that it is **more likely than not** that the conduct occurred and violated Department policy. *See Avery v. State Farm Mutual Automobile Insurance Co.*, 216 Ill. 2d 100, 191 (2005), (a proposition is proved by a preponderance of the evidence when it has found to be more probably true than not). If the evidence gathered in an investigation establishes that it is more likely that the misconduct occurred, even if by a narrow margin, then the preponderance of the evidence standard is met.

**Clear and convincing evidence** is a higher standard than a preponderance of the evidence but lower than the "beyond-a-reasonable doubt" standard required to convict a person of a criminal offense. *See e.g., People v. Coan*, 2016 IL App (2d) 151036 (2016). Clear and Convincing can be defined as a "degree of proof, which, considering all the evidence in the case, produces the firm and abiding belief that it is highly probable that the proposition . . . is true." *Id.* at ¶ 28.

## VII. ANALYSIS

### a. Officer ██████████ Discharged his Firearm in Violation of Rule 10

Officer ██████████ admitted that he accidentally discharged his firearm when he struck the hood of the fleeing vehicle. Officer ██████████ stated "from the involuntary motion of grabbing, you know, when you're, to grab, you know, at the hood of the vehicle, somehow I must've involuntarily flexed and made a muscle contraction and hit the trigger."<sup>33</sup>

While Officer ██████████ accidental discharge is not egregious in light of the fact that it occurred shortly after he was hit by the ██████████, it nonetheless violates Department policy. Department members should only have their finger on the trigger when they have made the conscious decision to shoot.<sup>34</sup> Although Officer ██████████ denied his finger was on the trigger prior to being hit by the ██████████, Officer ██████████ statement to COPA reflects that it is more likely than not that his finger was on the trigger. Specifically, it is extremely unlikely that an

<sup>33</sup> Attachment 69, p. 23, Lines 4-8

<sup>34</sup> Officer ██████████ acknowledged this during his statement to COPA. *See* Att. 69, p. 22, Lines 23-24.

involuntary muscle contraction would cause an individual to pull the trigger unless their finger was already on the trigger. Officer [REDACTED] did not assert that he made the conscious decision to shoot prior to being hit by the [REDACTED]. Therefore, his finger should not have been on the trigger. Had Officer [REDACTED] finger not been on the trigger, his involuntary muscle contraction would not have caused the weapon to discharge. COPA notes as concerning Officer [REDACTED] decision to even display his firearm. At best, at the time he pulled his firearm he had observed a property crime, an attempted theft. At no time did he articulate a belief that any of the individuals he observed were armed with a firearm. For these reasons, Officer [REDACTED] accidentally discharged his firearm in violation of Rule 10.

**b. Officer [REDACTED] Discharged his Firearm at and into a Moving Vehicle in Violation of Rule 6.**

Determinations regarding the potential use of excessive force in the course of an arrest, investigatory stop, or other seizure are properly analyzed under the Fourth Amendment's objective reasonableness standard. The question is whether the officer's actions are objectively reasonable in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. *Graham v. Connor*, 490 U.S. 386, 397 (1989); *see Estate of Phillips v. City of Milwaukee*, 123 F.3d 586, 592 (7th Cir. 2003). The following factors are instructive in making the determination of whether an officer's use of force is reasonable: (1) "the severity of the crime at issue;" (2) "whether the suspect poses an immediate threat to the safety of the officers or others;" and (3) "whether he is actively resisting arrest or attempting to evade arrest by flight." *Graham*, 490 U.S. at 396 (*citing Tennessee v. Garner*, 471 U.S. 1, 8-9 (1985)). The analysis of the reasonableness of an officer's actions must be grounded in the perspective of "a reasonable officer on the scene, rather than with the 20/20 vision of hindsight" and "allow for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation." *Plumhoff v. Rickard*, 134 S. Ct. 2012 (2014) (internal quotations and citation omitted). The analysis must take into account the totality of the circumstances confronting the officer, rather than just one or two factors. *Plumhoff*, 134 S. Ct. at 2020; *see also Scott v. Edinburg*, 346 F.3d 752, 756 (7th Cir. 2003)

Consistent with Illinois state law as codified at 720 ILCS 5/7-5, according to the Chicago Police Department's General Order 03-02-03, Section II, A:<sup>35</sup>

A sworn member is justified in using force likely to cause death or great bodily harm only when he or she reasonably believes that such force is necessary:

1. to prevent death or great bodily harm to the sworn member or to another person, or:

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<sup>35</sup> This report references the version of General Order 03-02-03 in effect on the date of the incident. The Department subsequently revised its Use of Force Directives.

2. to prevent an arrest from being defeated by resistance or escape and the sworn member reasonably believes that the person to be arrested:
  - a. has committed or has attempted to commit a forcible felony which involves the infliction, threatened infliction, or threatened use of physical force likely to cause death or great bodily harm or;
  - b. is attempting to escape by use of a deadly weapon or;
  - c. otherwise indicates that he or she will endanger human life or inflict great bodily harm unless arrested without delay.

General Order 03-02-03, Section III, titled “Department Prohibitions for Use of Deadly Force” states that use of firearms in the following ways is prohibited:

- A. Firing into crowds.
- B. Firing warning shots.
- C. Firing into buildings or through doors, windows, or other openings when the person lawfully fired at is not clearly visible.
- D. Firing at a subject whose action is only a threat to the subject himself (e.g., attempted suicide).
- E. Firing at or into a moving vehicle when the vehicle is the only force used against the sworn member or another person.

Finally, General Order 03-02-03, Section IV, titled “Affirmation of Protection of Life Policy” states that “[s]worn members will not unreasonably endanger themselves or another person to conform to the restrictions of this directive.”

General Order G03-02-03, III. E. Deadly Force prohibits the use of firing at or into a moving vehicle, when the vehicle is the only force used against the sworn member or another person.

CPD General Order 03-02-03 must be interpreted sequentially and as a whole. Section I of General Order 03-02-03 sets forth the purpose of the directive. Section II of General Order 03-02-03 lays out specific circumstances when the use of deadly force is justified.<sup>36</sup> However, Section III of General Order 03-02-03 then expressly prohibits CPD officers from using firearms in specific situations.

Section III of General Order 03-02-03 unambiguously and explicitly prohibits officers from “[f]iring at or into a moving vehicle when the vehicle is the only force used against the sworn member or another person.”<sup>37</sup> In other words, even when the use of deadly force is otherwise justified and permitted pursuant to Section II of General Order 03-02-03, Section III

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<sup>36</sup> See *supra* Section IV(A)(3).

<sup>37</sup> *Id.*

still prohibits officers from firing at or into a moving vehicle when the vehicle itself is the only force used against the officer or another person.

Finally, Section IV of General Order 03-02-03 provides that officers shall not *unreasonably* endanger themselves or another person in order to comply with the prohibitions contained in Section III.<sup>38</sup> Pursuant to this Section, CPD officers do not have to comply with Section III of General Order 03-02-03's prohibitions when the failure to do so would unreasonably endanger the officer or another person.

Read in the context of General 03-02-03 as a whole,<sup>39</sup> unlike Section II which permits the use of deadly force when the officer *reasonably* believes deadly force is necessary to prevent death or great bodily harm to the sworn member or to another person, Section IV applies only when the officer's failure to use deadly force would *unreasonably* endanger the officer or a third party.<sup>40</sup> This inverted phrasing is not accidental and it is a tenant of statutory interpretation that “[e]ach word, clause, and sentence should be given effect so as not to be rendered superfluous.” *Chicago Teacher’s Union, Local No. 1. v. Board of Education of the City of Chicago*, 2012 IL 112566, ¶ 15. Furthermore, the Superintendent specifically modified General Order 03-02-03 in 2015 to remove language that permitted officers to fire into a moving vehicle simply to prevent death or seriously bodily injury to an officer or another person.<sup>41</sup>

The current version of CPD General Order 03-02-03 closely mirrors the 2006 model policy promulgated by the International Association of Chiefs of Police (IACP) and many other police departments in prohibiting the use of firearms against a moving vehicle when the vehicle is the only threat.<sup>42</sup> These policies recognize that experts find firing into a moving vehicle to be extremely dangerous and usually ineffective.<sup>43</sup> First, bullets fired from handguns are unlikely to be effective against an automobile.<sup>44</sup> Second, if the driver is hit by gunfire, the vehicle is likely to crash in an uncontrolled manner.<sup>45</sup> Third, it is extremely difficult to hit a driver in a moving vehicle with a bullet, and there is a significant risk of accidentally striking a passenger or bystander with gunfire.<sup>46</sup> Fourth, if the driver is not hit by gunfire, he/she is likely to drive even

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<sup>38</sup> *Id.*

<sup>39</sup> See *Kraft, Inc. v. Edgar*, 138 Ill. 2d 178, 188 (1990) (“[I]n ascertaining the meaning of a statute, the statute should be read as a whole with all relevant parts considered.”). Courts apply the same rules of construction to administrative rules and regulations as they do to statutes. *Hetzer v. State Police Merit Board*, 49 Ill. App. 3d 1045, 1047 (1977).

<sup>40</sup> Notably, Section IV also does not include any language that tracks the second prong of Section II which permits officers to use deadly force to prevent an arrest from being defeated by resistance or escape under specified circumstances.

<sup>41</sup> Compare CPD General Order 03-02-03 (effective date 10 February 2015) to CPD General Order 03-02-03 (effective date 1 October 2002).

<sup>42</sup> INT'L ASS'N OF CHIEFS OF POLICE, MODEL POLICY: USE OF FORCE 1 (Feb. 2006), available at <https://www.documentcloud.org/documents/2303826-useofforcepolicy.html>.

<sup>43</sup> See IACP NAT'L LAW ENFT POLICY CTR., USE OF FORCE: CONCEPTS AND ISSUES PAPER 7 (updated Feb. 2006), available at <https://www.documentcloud.org/documents/2303827-useofforcepaper.html>; John A. Grosst, *Essay: Unguided Missiles: Why The Supreme Court Should Prohibit Police Officers From Shooting at Moving Vehicles*, 163 U. PA. L. REV. ONLINE 135 (2016).

<sup>44</sup> See IACP NAT'L LAW ENFT POLICY CTR., USE OF FORCE: CONCEPTS AND ISSUES PAPER 7 (updated Feb. 2006),

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

more recklessly to escape, thereby increasing the danger the vehicle itself poses to officers, other occupants, and bystanders. Finally, firing at a moving vehicle may lead other officers in the area to mistakenly believe that the gunfire is coming from the vehicle itself which increases the risk that another officer will mistakenly use deadly force on an unarmed subject.

To apply the exception to the prohibition on firing at or into a moving vehicle broadly would make the prohibition entirely meaningless. In other words, because the use of a vehicle as force inevitably puts officers and civilians at risk of death or great bodily harm, the exception would swallow the rule. COPA does not interpret General Order 03-02-03 to make the prohibition on firing at or into a moving vehicle superfluous.<sup>47</sup> Thus, the exception applies narrowly to cases where specific, unusual facts and circumstances demonstrate that complying with the prohibition would *unreasonably* endanger the officer or another person.

In this case, it is undisputed that the [REDACTED] was the only force used against [REDACTED]. Therefore, the prohibition on firing at or into a moving vehicle applied. The evidence demonstrates that based on the totality of the circumstances facing Officer [REDACTED] at the time he discharged his firearm - four<sup>48</sup> times at and into the [REDACTED],<sup>49</sup> - a reasonable officer would not have believed that complying with CPD General Order 03-02-03's prohibition on firing at or into a moving vehicle would *unreasonably* endanger himself/herself or another person. In this instance, a reasonable officer would have complied with the prohibition and not fired at or into the [REDACTED].

Officer [REDACTED] admits that he fired at the [REDACTED] only after it was driving away, and the immediate danger had already passed. Officer [REDACTED] acknowledges he never observed a firearm or any other weapon – besides the fleeing vehicle - capable of causing harm. Thus, at the time he discharged his weapon, the [REDACTED] no longer constituted a threat to Officer [REDACTED]. Moreover, Officer [REDACTED] admitted the [REDACTED] did not constitute a threat to him at the time he discharged his firearm.

Officer [REDACTED] asserted he fired his weapon because the subject driving the vehicle attempted to kill him, and he felt the driver would try to kill or harm citizens or police officers in the area. However, Officer [REDACTED] did not identify any other citizens or police officers in the immediate path of the [REDACTED]. While Officer [REDACTED] certainly had a reasonable basis to believe the driver of the vehicle may continue to drive in a reckless manner that disregarded the safety of others in order to escape arrest, Officer [REDACTED] did not have a reasonable basis to

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<sup>47</sup> See *Kraft, Inc.*, 138 Ill. 2d at 188 (“A statute should be construed so that no word or phrase is rendered superfluous or meaningless.”).

<sup>48</sup> Officer [REDACTED] stated he discharged three times during his statement to COPA, but his TRR filled out shortly after the incident reflects that he discharged his firearm four times which is consistent with physical evidence.

<sup>49</sup> A preponderance of the evidence demonstrates that the silver [REDACTED] recovered at [REDACTED] was the silver [REDACTED] involved in the incident involving Officer [REDACTED] at [REDACTED]. Specifically, the recovered silver [REDACTED] closely matched the description of the vehicle observed by Officer [REDACTED], had been reported stolen prior to the incident, and was recovered two days after the incident with two bullet holes in locations consistent with Officer [REDACTED] discharging his firearm at it while it fled away from him.

believe that Subject 1 intended to purposefully use his vehicle to murder police officers or civilians especially when none were even present in the immediate vicinity.<sup>50</sup>

The possibility that Subject 1 might continue to drive recklessly and the theoretical threat that reckless driving posed to the public at large was not sufficient justification for Officer [REDACTED] use deadly force especially in light of General Order 03-02-03's clear prohibition on firing at or into a moving vehicle. *See Smith v. Cupp*, 430 F.3d 766 (6th Cir. 2005) (finding that an officer would not be justified to fire into a moving vehicle after it passed because the vehicle did not pose an immediate threat to the officer once it passed him). Officer [REDACTED] would not have unreasonably endangered himself or another person by not discharging his firearm. A reasonable officer would recognize that he or she is not likely to hit the driver as a vehicle drives away at a high rate of speed and that the driver is likely to react to the gunfire by driving even more recklessly out of fear for their own life, thereby escalating the threat the vehicle poses to others. Furthermore, a reasonable officer would understand that, even if his or her gunfire struck the driver of the vehicle, the vehicle would likely subsequently crash in an uncontrolled fashion putting others at great risk of death or bodily harm. Finally, a reasonable officer would have taken into account the risk his or her gunfire posed to Subject 2, the occupant of the vehicle.<sup>51</sup>

For these reasons, a reasonable officer would not have fired any shots at or into the [REDACTED] based on the facts and circumstances faced by Officer [REDACTED].

### VIII. CONCLUSION

Based on the analysis set forth above, COPA makes the following findings:

Officer	Allegation	Finding
Officer [REDACTED] [REDACTED], # [REDACTED]	1. Accidentally discharged his firearm, in violation of Rule 10.	Sustained
	2. Fired his firearm at and into a moving vehicle, in violation of Rule 6.	Sustained

<sup>50</sup> The fact that the [REDACTED] hit Officer [REDACTED] is not sufficient, because Officer [REDACTED] was standing directly in front of the [REDACTED] while Subject 1 tried to flee from the scene. Subject 1 did not reverse his vehicle or otherwise attempt to harm Officer [REDACTED] after hitting him; rather Subject 1 continued to drive away demonstrating that he intended to flee.

<sup>51</sup> Subject 1's use of force against Officer [REDACTED] could not justify use of force against Subject 2, the occupant, under General Order 03-02-03. Therefore, the risk the gunfire posed to Subject 2 was relevant under the totality of the circumstances.

### VIII. DISCIPLINE RECOMMENDATION

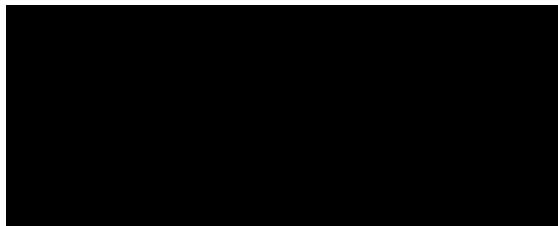
Officer [REDACTED] does not have any sustained findings in his disciplinary history.

Officer [REDACTED] possesses numerous commendations and awards, including:

- Department Commendation (3)
- Complimentary Letter
- Honorable Mention (64)
- Unit Meritorious Performance Award
- 2004 Crime Reduction Ribbon
- Democratic National Convention Award

COPA appreciates that Officer [REDACTED] was focused upon preventing a crime to his personal property, however, under the circumstances presented, his actions were in clear violation of Department policy and unreasonably placed the public in danger. While Officer [REDACTED] had just been struck with the vehicle, it was his duty not to place himself in danger. Officer [REDACTED] subsequent firearm discharge into a fleeing vehicle was serious and could have had grave consequences. Therefore, considering the conduct of the officer and his complimentary and disciplinary history, COPA recommends discipline of a 180-day suspension.

Approved:

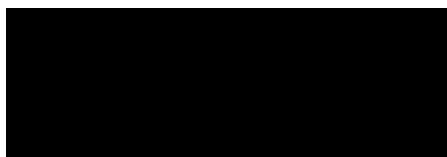


July 30, 2019

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Andrea Kersten  
*Deputy Chief Administrator*

Date



July 30, 2019

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Sydney Roberts  
*Chief Administrator*

Date

**Appendix A**

Assigned Investigative Staff

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<b>Squad#:</b>	
<b>Major Case Specialist:</b>	
<b>Supervising Investigator:</b>	
<b>Deputy Chief Administrator:</b>	Andrea Kersten